BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. TORRANCE UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2014120688 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On December 11, 2014 Student filed a Due Process Hearing Request[1] (complaint) naming Torrance Unified School District.

On December 23, 2014, District timely filed a Notice of Insufficiency as to Student's complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.[2] The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of Title 20 United States Code section 1415(b)(7)(A).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time.[3] These requirements prevent vague and confusing complaints, and promote fairness by providing the

[1] A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

[2] 20 U.S.C. § 1415(b) & (c).

[3] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.[4]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[5] The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes.[6] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[7]

DISCUSSION

Student's complaint contains many allegations of a denial of a FAPE covering the entire two year statutory period. With respect to the IEP meeting held on December 17, 2012, Student alleges District denied Student a FAPE by:

1) failing to properly assess Student in the areas of language and speech, psychoeducation, occupational therapy, and social skills (ASSISTT);
2) failing to assess Student in all areas of suspected disability, specifically behavior (via a functional behavior analysis), assistive or adaptive technology, and educationally related mental health;
3) depriving Parents of meaningful participation and depriving Student of educational benefit by:
    a) identifying Student as eligible for special education and related services under the categories of other health impairment and specific learning disability, rather than autistic-like behavior;
    b) failing to include Student's teacher at the nonpublic school he attended as a member of the IEP team;

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[4] See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

[5] Sen. Rep. No. 108-185, *supra*, at p. 34.

[6] *Alexandra R. v. Brookline School Dist*. (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

[7] Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

c) failing to develop appropriate goals in all areas of need (the only goal was in writing);
d) predetermining District's offer of placement and services and failing to consider Parent's input;

4) failing to offer Student an appropriate placement;
5) failing to offer Student appropriate related services, specifically;
   a) language and speech therapy;
   b) occupational therapy;
   c) counseling; social skills;
   d) assistive or adaptive technology; and
   e) behavior services; and
6) failing to offer Student an extended school year program.

With respect to the IEP meeting of December 17, 2013, Student alleges District denied Student a FAPE by:

1) depriving Parents of meaningful participation and depriving Student of educational benefit by:
   a) identifying Student as eligible for special education and related services under the categories of other health impairment and specific learning disability, rather than autistic-like behavior;
   b) failing to include Student's teacher at the nonpublic school he attended as a member of the IEP team;
   c) predetermining District's offer of placement and services and failing to consider Parent's input;
2) failing to offer Student an appropriate placement;
3) failing to offer Student appropriate related services, specifically;
   a) language and speech therapy;
   b) occupational therapy;
   c) counseling; social skills;
   d) assistive or adaptive technology; and
   e) behavior services; and
4) failing to offer Student an extended school year program.

Student alleges that District failed to respond timely to his request for independent educational evaluations in the areas of psychoeducation and language and speech, submitted in November 2014. Student also alleges that District failed to hold an annual IEP for Student in December 2014.

Student's proposed remedies are for independent educational evaluations in the areas of psychoeducation, language and speech, occupational therapy, assistive or adaptive technology, educationally related mental health, and behavior, in the form of a functional behavior analysis. Student also requests that District reimburse Parents for tuition paid to the two nonpublic schools Student attended within the two year statute of limitations and for the cost of transportation to school during those two years, and to pay for Student's continued

placement at the nonpublic school he attends, with transportation, for the remainder of the 2014-2015 regular school year and for the 2015 extended school year. Student requests reimbursement for tutoring and counseling services Parents procured, and funding for occupational therapy, language and speech therapy, social skills services, and counseling.

The facts alleged in Student's complaint are sufficient to put District on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and adequate related facts about the problem, as well as adequate statements of proposed remedies, to permit District to respond to the complaint and participate in a resolution session and mediation. Therefore, Student's complaint is sufficient.

ORDER

1. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

DATE: December 24, 2014

/S/

KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings